

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

THE RELIZON COMPANY, et al.,

Plaintiffs,

Case No. 3:10-cv-145

-vs-

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

CRAIG W. SEYBOLD, et al.,

Defendants.

---

**ORDER**

---

This case is before the Court on Defendant John Vento, Jr.'s, Motion to Dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2) and failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6)(Doc. No. 95). Plaintiff has responded (Doc. No. 96) and Defendant Vento has filed a Reply (Doc. No. 100).

In the Reply, Defendant Vento notes that Plaintiff has relied on factual allegations in its Memorandum in Opposition which are not present in the Second Amended Complaint and argues that the Court may only consider allegations in the pleadings on a motion to dismiss. It would serve no useful purpose for the Magistrate Judge to make a recommendation based on the current state of the pleadings if this would only lead to further amendment and briefing.

It is hereby ORDERED, not later than June 10, 2012, Plaintiff file either (1) a motion to amend further to include as many of the referenced allegations as it believes are necessary to support its claim of personal jurisdiction or (2) a memorandum in response to Defendant Vento's

assertion that the Court may not consider allegations outside the pleadings.

June 1, 2012.

s/ **Michael R. Merz**  
United States Magistrate Judge